

Application No. 10/564,388  
Amdt. Dated: May 17, 2009  
Reply to Office Action Dated: March 17, 2009

### **REMARKS/ARGUMENTS**

The Examiner is thanked for the final Office Action mailed March 17, 2009. The status of the application is as follows:

- Claims 1-4, 6-14, 16-17 and 19-23 are pending, claims 1, 2, 6-9 and 11-12 have been amended, claims 5, 15 and 18 have been canceled, and claims 21-23 have been added;
- The specification is objected to;
- Claims 12-20 are rejected under 35 U.S.C. 112, second paragraph;
- Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Manabe et al. (US 7,433,718 B2);
- Claims 1-5, 9-11, 12-15 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwabuchi et al. (US 6,327,495 B1) in view of Manabe et al; and
- Claims 6-8 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwabuchi et al. in view of Manabe et al.

The objections and rejections are discussed below.

#### **Preliminary Matters**

Claims 6-9 and 11 have been amended herein and the amendments do not address issues of patentability.

#### **The Objection to the Specification**

The specification is objected to for missing section headings. As section headings are merely permissible and not mandatory (See 37 CFR 1.77(b); MPEP 608.01(a)). As such, applicant respectfully has not amended the specification to include section headings and requests withdrawal of the objection.

#### **The Rejection of Claims 12-20 under 35 U.S.C. 112, Second Paragraph**

Claims 12-20 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office asserts that there is insufficient antecedent basis in claim 12, lines 7-8, for the limitation "said analysis means". Claim 12 has been

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amended by replacing the limitation "said analysis means" with "sensor signal interpretation unit" which has antecedent basis. Accordingly, this rejection should be withdrawn.

**The Rejection of Claim 1 under 35 U.S.C. 102(b)**

Claims 1 stand rejected under 35 U.S.C. 102(b) as being anticipated by Manabe et al. This rejection should be withdrawn because Manabe et al. does not teach each and every element as set forth in the subject claims and, therefore, does not anticipate claim 1.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). MPEP §2131.

Amended independent **claim 1** is directed to a portable electronic device, comprising: a first contact surface contacting a first skin of an individual during usage of the device; a second contact surface contacting a second skin on a part of a body of the individual below a shoulder line of the individual, wherein the first contact surface comprises a first electrode and the second contact surface comprises a second electrode, said first electrode being electrically isolated from said second electrode; and a measuring component for measuring **an electrical differential signal in an ECG spectrum generated by cardiac activity from said first electrode and said second electrode** during the usage of said device, said electrical differential signal being representative of a physiological condition of the individual. The prior art does not teach or suggest at least the emphasized claim aspect. The prior art teaches a mobile terminal capable of measuring biological signals such as electromyography (EMG)(muscle movement) or electroencephalogram (brain waves) signals but not signals such as electrocardiogram signals (ECG)(cardiac activity). Accordingly, this rejection should be withdrawn.

**The Rejection of Claims 1-5, 9-11, 12-15 and 19-20 under 35 U.S.C. 103(a)**

Claims 1-5, 9-11, 12-15 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwabuchi et al. in view of Manabe et al. This rejection should be withdrawn because the combination of Iwabuchi et al. and Manabe et al. does not establish a *prima facie* case of obviousness with respect to the subject claims.

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The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed. *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_\_ (2007). MPEP §2143.

As noted above, amended independent **claim 1** now recites a first contact surface contacting a first skin of an individual during usage of the device; a second contact surface contacting a second skin on a part of a body of the individual below a shoulder line of the individual, wherein the first contact surface comprises a first electrode and the second contact surface comprises a second electrode, said first electrode being electrically isolated from said second electrode; and a measuring component for measuring **an electrical differential signal in an ECG spectrum generated by cardiac activity from said first electrode and said second electrode** during the usage of said device, said electrical differential signal being representative of a physiological condition of said individual. The combination of Iwabuchi et al. and Manabe et al. does not teach or suggest at least the emphasized claim aspect.

Manabe et al. was discussed above. Iwabuchi et al. teaches a health management system that measures health management data. Iwabuchi et al. also teaches at least four electrically conductive electrodes in which the voltage is detected to determine the health management data. Iwabuchi et al. does not teach or suggest measuring an electrical differential signal in an ECG spectrum from the at least four electrodes during the usage of the device. Accordingly, this rejection should be withdrawn.

**Claim 12** has been amended to include claim aspects similar to those added to claim 1. As such, the above discussion with respect to claim 1 applies *mutatis mutandis* to claim 12, and this rejection should be withdrawn.

**Claims 3, 4, 9-11, 13-14 and 19-20** respectively depend from claims 1 and 12, and are allowable at least by virtue of this dependency.

**The Rejection of Claims 6-8 and 16-18 under 35 U.S.C. 103(a)**

Claims 6-8 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwabuchi et al. in view of Manabe et al. **Claims 6-8 and 16-17** respectively depend from claims 1 and 12, and are allowable at least by virtue of this dependency.

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**New Claims 21-23**

Newly added claims 21-23 emphasize various aspects. No new matter has been added. These aspects are absent from the prior art of record. Entry and allowance of claims 21-23 is respectfully requested.

**Cancelled Claims**

Claims 5, 15 and 18 have been cancelled herein without prejudice or disclaimer. As such, the rejection of claims 5, 15 and 18 is moot. It is noted that applicants have cancelled claims 5, 15 and 18 from further consideration in this application not for issues of patentability, for facilitating expeditious prosecution of the application. Applicants are not conceding in this application that the cancelled claims are not patentable over the art cited by the Examiner. Applicants respectfully reserve the right to pursue the cancelled claims and/or other claims in one or more continuations and/or divisional patent applications.

**Conclusion**

In view of the foregoing, it is submitted that the claims distinguish patentably and non-obviously over the prior art of record. An early indication of allowability is earnestly solicited.

Respectfully submitted,

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